IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MISC. PETITION NO. 64 OF 2000

SICOM LIMITED .. Petitioner.

vs.

Zenith Steel Tubes and

Industries Ltd., & Anr. .. Respondents.

Mr. V.R. Dhond with K.G. Desai i/by Mehta Laljee for petitioner.

Mr. J.N. Shiralkdaar for respondent.

CORAM : S.U. KAMDAR, J.

DATE : 25TH APRIL, 2005.

1. The present of petition is filed under section 31 (1) (aa) of the State Financial Corporation Act.

2. The facts of the present case briefly enumerated are as under :-

3. The petitioner is the deemed State Financial Corporation within the meaning of section 46 of the State Financial Corporation Act, 1951. The Respondent Company was carrying on business of

manufacturing galvanised pipes. Sometime in or about November, 1992, the 1st respondent company approached the petitioner for financial assistance to the tune of Rs. 142 lacs to meet the part finance of the cost of the project. It was proposed to set up a factory at Survey No. 66 / 1B within village Madap, Taluka Kolhapur, District Raigad for manufacture of galvanised pipes. The said amount was sanctioned and vide their letter dated 20.11.1992 a sum of Rs. 1,42 lacs was advanced by the petitoner to the 1st respdnent. An agreemnt was entered into for term loan and the respodnent no.1 also created a security for repayment of the said amount by hypothecating their plant and machinery and created an equitable mortgage of their factory premsies situated at the aforesaid address. A loan agreement was executed on 30.3.1993 agreeing to repay the said amount of loan in various instalments. On 30.3.1993 the 2nd respondent executed a personal guarantee for repayment of the said amount on default on the part of the 1st respodnent. The respondent no. 1 company committed various defaults in repayment of the aforesaid amount. In view of the defaults committed, the petitioner issued a notice on 16.10.1998 calling upon the respodnent no. 1 company to make payment of the overdue amount within the stipulated period of time. However, the 1st respondent failed and neglected to make the payment and, therefore, by

notice dated 10.1.1999 the petitioner called upon the respondent no. 1 to repay the entire amount by 3.2.1999 failing which the possession of the assets will be taken on 5.2.1999. However, the respondent no. 1 failed and neglected to make the payment and thus the petitioner issued a notice on 13.6.2000 calling upon the respondent no. 2 to make payment of the aforesaid amount by invoking the personal guarantee given by the 2nd respondent. Inspite of the said notice being served, the respondent no. 2 did not make the aforesaid payment. Thus, accordingly, the present petition is filed against the respondent no. 2 under section 31 (1) (aa) of the State Financial Corporation Act enforcing the said personal guarantee. The respondent no. 1 has since been declared sick by the BIFR under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 and thus the said company is under the BIFR and the proceedings are not yet terminated.

4. In the present case, the respondent has contended that in view of section 22 of the said Act, the personal guarantee cannot be invoked as against the 2nd respodnent. For the reasons set out by me in my judgment in Misc. Petition Nos. 51 to 61 of 2000, I cannot accept the aforesaid contention and, therefore, accordingly, the same is rejected.

5. It has been next contended that the petitioner company cannot enforce the guarantee unless the assets which are mortgaged in their favour has been realised. I am unable to accept the aforesaid contention also firstly because the said assets cannot be realised because of the BIFR proceedings initiated by the respondent no. 1 itself. In any event, the liability of the guarantors is independent to the principal debtor and, therefore, the same can be invoked and the amount can be recovered.

6. In the aforesaid circumstances, I find no merit in the contentions advanced by the learned counsel for the respondent and accordingly I allow the petition and pass the following order:-

7. I direct the respondent nos. 2 to make payment to the petitioner of a sum of Rs. 75,89.225/- with further interest at the rate of 12% per annum till payment and/or realisation. However, there shall be no order as to costs.